



1101 Kings Highway N., Ste 402
Cherry Hill, NJ 08034
Tel: (856) 685-7420
Fax: (856) 685-7417
jswidler@swartz-legal.com

May 26, 2020

VIA ECF and E-MAIL

The Honorable Alison J. Nathan, USDJ
United States District Court for the Southern District of New York
40 Foley Square
New York, NY 10007
NathanNYSDCambers@nysd.uscourts.gov

Re: *Lesser et al. v. TIAA Bank FSB f/k/a Everbank Financial Corp.*
Docket No. 19-vc-01707

Dear Judge Nathan:

I write on behalf of all Parties to advise the Court that the Parties have reached a proposed settlement of this action which was the product of lengthy negotiations, two full-day mediation sessions between the Parties, and subsequent negotiations to agree upon the proposed settlement agreement which concluded late last week, on May 22. Accordingly, the Parties will be filing a joint motion to approve their settlement promptly. On May 21, the Parties received the Court's Opinion and Order on TIAA Bank's Motion to Compel Arbitration and Stay the Proceedings and have now included that ruling and its effect in the settlement agreement.

Essentially, the settlement completely resolves the claims of 54 former mortgage loan employees of Defendant, TIAA Bank (and/or former mortgage loan employees of TIAA Bank's predecessor, EverBank). Of those 54, fifty are either named plaintiffs or have opted-into this action and five have been arbitrating their claims against Defendant in an earlier-filed American Arbitration Association ("AAA") proceeding before Arbitrator Andrew Byrne (one individual who opted-into this action, Omar Hassan, is also a claimant in the arbitration). Much of the discovery taken which facilitated the mediation and allowed the Parties to reach a settlement was done in connection with the AAA arbitration proceeding, overseen by Arbitrator Byrne.

Because the settlement will need to be approved both in the pending AAA arbitration proceeding and by this Court, and because Arbitrator Byrne is familiar with the claims and defenses raised by the Parties in the arbitration (which are identical to those raised in this proceeding) and has been diligently overseeing the arbitration for more than a year and a half, the Parties ask the Court to consider their joint request for the appointment of Arbitrator Byrne, pursuant to Fed. R. Civ. P. 53, as a special master, who would issue (a) a reasoned opinion as to approval of the settlement agreed to by the five (5) individuals in arbitration, and (b) a Report & Recommendation that would simultaneously address the identical approval issues related to the review and approval of the settlement with respect to the opt-in plaintiffs whose claims are before



this Court. The Parties' motion for approval would, of course, be filed with this Court and would follow Your Honor's instructions for such motions.

The Parties request the Court hold a status conference at its earliest convenience to discuss this proposal with the Court and determine the Court's preference on such procedure.

The Parties thank the Court for its consideration of this request.

Respectfully submitted,

SWARTZ SWIDLER, LLC

/s/ Justin L. Swidler

Justin L. Swidler, Esq.

cc: counsel of record (via ECF), Andrew Byrne (via email)